

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DELBERT M. GREENE,

Plaintiff

v.

STATE OF NEVADA, et al.,

Defendants

Case No.: 2:22-cv-01634-APG-DJA

**Order Accepting Report and
Recommendation and Denying Plaintiff's
Motion**

[ECF Nos. 3, 6]

On October 5, 2022, Magistrate Judge Albregts recommended that I dismiss plaintiff Delbert Greene's complaint because Greene sues defendants who are immune and because Greene's claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). ECF No. 3. Greene did not timely object. Thus, I am not obligated to conduct a de novo review of the report and recommendation. 28 U.S.C. § 636(b)(1) (requiring district courts to "make a de novo determination of those portions of the report or specified proposed findings to which objection is made"); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) ("the district judge must review the magistrate judge's findings and recommendations de novo *if objection is made*, but not otherwise" (emphasis in original)).

Rather than object, Greene filed a "motion of good faith consideration." ECF No. 6. In that motion, Greene asserts that Clark County and City of Las Vegas should be substituted for two of the Doe defendants. He contends that, construed liberally, he has stated a claim against these defendants because the "county treasury did not fund plaintiff's investigation." *Id.* at 2. But a review of the complaint shows that this allegation relates to a challenge to his conviction. ECF No. 1-1 at 13-14 (alleging the "county treasury violated chapter 7 when this agency of the City of Las Vegas failed to issue funds for an investigation to the three court appointed attorneys

1 ...”). Greene does not explain why his allegations against the county or city are not barred by
2 *Heck*. Consequently, I deny his motion and overrule it to the extent that it is meant to be an
3 objection to the report and recommendation. I accept Judge Albregts’ recommendation to
4 dismiss Greene’s complaint without prejudice to Greene filing a habeas corpus petition and
5 without prejudice to Greene filing a civil rights lawsuit against non-immune defendants if his
6 conviction is invalidated.

7 I THEREFORE ORDER that Judge Albregts’ report and recommendation (**ECF No. 3**) is
8 **accepted** and plaintiff Delbert Greene’s motion of good faith consideration (**ECF No. 6**) is
9 **denied**. Green’s complaint (ECF No. 1-1) is DISMISSED without prejudice to Greene filing a
10 habeas corpus petition and without prejudice to Greene filing a civil rights lawsuit against non-
11 immune defendants if his conviction is overturned.

12 DATED this 26th day of October, 2022.

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15 ANDREW P. GORDON
16 UNITED STATES DISTRICT JUDGE
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